IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.300 of 1992

Date of decision : August 10, 2007

State of H.P. **…Appellant.**

Versus

Gauri Dutt and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. K.D. Sood, Advocate.

Surjit Singh, Judge(Oral)

Respondents have been charged with and tried for offences under Sections 147, 148, 341, 342, 452, 427, 457 and 380 of the Indian Penal Code by the Sub Divisional Judicial Magistrate, Sundernagar. After recording the evidence of the prosecution and examination of the respondents under Section 313 Cr. P.C. and also recording the evidence led by them, the trial Magistrate, acquitted all of them holding that the evidence on record did not establish the charge beyond reasonable doubt.

2. Case of the prosecution, as per evidence on record, may be summed up thus. On the night intervening 22nd and 23rd October, 1988, a mob of 100-150 persons went to the house of PW-1 Krishni Devi where she was sleeping alongwith her son Jeet Ram (PW10) and daughter Kunta Devi (PW11). Respondents were among the aforesaid

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Whether reporters of the local papers may be allowed to see the judgment?

mob. They allegedly entered the house of PW-1 Krishni Devi and assaulted her, her son and daughter and caused some injuries (simple) to them. Thereafter they made them to move out of the house and took them to a nearby place and kept them under a tree for the whole of the night. Then the house of PW-1 Krishni Devi was pulled down by them. Next morning matter was reported by PW-1 Krishni Devi to PW-5 Khazana Ram , a member of Panchayat. Police was apprised of the incident late in the evening vide complaint Ext.PW1/A. On the basis of this complaint, which was presented to ASI at 7.30 P.M., case was formally registered against the present respondents, all of whom were named in the said complaint.

3. We have heard the learned Additional Advocate General as also the leaned counsel for the respondents. We have also been taken through the entire evidence by the learned Additional Advocate General. We have considered the evidence on record and the submissions made by the learned Additional Advocate General as also the learned counsel representing the respondents.

4. Evidence of the prosecution is full of improbabilities, contradictions, discrepancies and inconsistencies, which create reasonable doubt about the authenticity of the prosecution version. Krishni Devi PW-1, while in the witness box, stated that she did not know who had written the complaint Ext. PW1/A for her. She stated that she did not know the names of the respondents, but could identify them by their faces. However, in the complaint Ext.PW1/A all the eighteen respondents are named. The statement that she did not know the names of the respondents was made by Krishni Devi on 25th March, 1991, when the accused were not present in the Court. Therefore, the recording of her further examination was deferred. She was re-

examined on 20the September, 1991 when the respondents were present. Strangely enough, on that date she named all the respondents in her testimony.

5. It has come in the testimony of PW-1 Krishni Devi, PW-10 Jeet Ram and PW-11 Kunta Devi that it was pitch dark and they were not allowed to switch on the light or even to light the match stick. That means, it was not possible for them to identify their alleged assailants. PW-10 Jeet Ram stated that he was pinned down on his cot by three of the assailants, but their faces were covered. PW-11 Kunta Devi stated that the faces of all the assailants were covered. PW-1 Krishni Devi, who went to the member of the Gram Panchayat, Khazana Ram (PW-5) on the next morning, complained that “someone” had demolished her house, but she did not name that “someone”, meaning thereby that she was not knowing as to who had committed the alleged mischief.

6. There is unexplained delay of about 18 hours in reporting the matter to the police. The possibility that during this period of 18 hours some deliberations, discussions etc. took place to name and implicate the respondents, cannot be ruled out, especially when complainant i.e. Krishni Devi (PW-1) while in the witness box for the first time stated that she was not knowing any of the respondents by name, even though named in the complaint Ext.PW1/A,

7. Another reason for our suspecting the genuineness of the earliest version given to the police in the form of complaint Ext.PW1/A is that in the said complaint there is serious allegation of gang rape of PW1 Krishni Devi by three unnamed assailants, but while in the witness box Krishni Devi has not made even a whisper of this allegation.

8. In view of the above stated position, we are of the considered view that the order of acquittal passed by the trial Magistrate cannot be said to be unfounded or say not supported by the evidence on record. Hence, the appeal is dismissed.

(Surjit Singh), J

August 10, 2007(ss) **(Surinder Singh), J**